

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**CHARLES RICE KENDALL and
ANN P. HOCHBERG, as Trustees for
The Thomas E. Proctor Heirs Trust,**

Plaintiffs,

V.

NO. 20-CV-00838

**ALTA MARCELLUS DEVELOPMENT, :
LLC, ARD OPERATING, LLC, :
INTERNATIONAL DEVELOPMENT :
CORP., and SWN PRODUCTION :
COMPANY, LLC, :**

JUDGE WILSON

ELECTRONICALLY FILED

Defendants.

**DEFENDANTS ALTA MARCELLUS DEVELOPMENT, LLC AND
ARD OPERATING, LLC'S NOTICE OF MAINE CITIZENSHIP IN
FURTHER SUPPORT OF MOTION TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION AND FOR STAY PENDING
DETERMINATION WHETHER THE ACTION
MUST BE DISMISSED IN ITS ENTIRETY**

Defendants Alta Marcellus Development, LLC (“Alta Marcellus”) and ARD Operating, LLC (“ARD Operating”) (Alta Marcellus and ARD Operating are referred to collectively as the “Alta Defendants”) provide the Court with the following notice of their Maine citizenship in further support of the Motion to Dismiss this Action Due to Lack of Subject Matter Jurisdiction and for Stay Pending Determination Whether the Action Must be Dismissed in its Entirety (ECF No. 70):

1. The Alta Defendants and Plaintiffs share common citizenship, and the Court lacks subject matter jurisdiction.

2. On January 20, 2021, the Alta Defendants provided Plaintiffs with a Declaration confirming the absence of complete diversity due to common Massachusetts citizenship between the Alta Defendants and Plaintiff-Trustee Ann P. Hochberg.

3. On January 20, 2021, the parties began conferring regarding the absence of subject matter jurisdiction. The Alta Defendants asserted that the action may not proceed with the Alta Defendants as parties due to the absence of subject matter jurisdiction and that the action should be stayed pending a determination whether it must be dismissed in its entirety. Plaintiffs requested additional detail concerning the Alta Defendants' Massachusetts citizenship, which the Alta Defendants provided on January 29, 2021.

4. Plaintiffs informed Defendants on February 2, 2021 that Plaintiffs would not agree to dismiss the action but instead would file a motion to dismiss Plaintiff-Trustee Ann P. Hochberg pursuant to Federal Rule of Civil Procedure 21 in an effort to rid themselves of Massachusetts citizenship and to cure the absence of subject matter jurisdiction. (*See* ECF No. 69 at 13).

5. Plaintiffs' proposal was an acknowledgement that the Court lacked subject matter jurisdiction.

6. On February 3, 2021, the Alta Defendants confirmed they would oppose Plaintiffs' planned motion and would file their own motion to dismiss the action due to lack of subject matter jurisdiction and for stay until the Court had determined whether the action must be dismissed in its entirety. There are now competing motions before the Court: Plaintiffs' Motion to Dismiss Plaintiff-Trustee Ann P. Hochberg Pursuant to Rule 21 with Supporting Brief (ECF Nos.68-69), and the Alta Defendants' Motion to Dismiss this Action Due to Lack of Subject Matter Jurisdiction and for Stay Pending Determination Whether the Action Must be Dismissed in its Entirety with Supporting Brief (ECF Nos. 70-71).

7. Given their complex membership structure and the dispositive impact of shared Massachusetts citizenship on the Court's subject matter jurisdiction, the Alta Defendants had not determined all states in which they have citizenship for diversity purposes. (ECF No. 71 at n.2).

8. Specifically, the Alta Defendants had not confirmed whether – by virtue of the citizenship of their constituent members – the Alta Defendants were also citizens of Maine like Plaintiff-Trustee Charles Rice Kendall. (ECF No. 71 at n.3).

9. The Alta Defendants have now confirmed that they are citizens, *inter alia*, of Maine as well as Massachusetts for purposes of diversity of citizenship and

this Court's subject matter jurisdiction pursuant to 28 U.S.C. § 1332. As of May 22, 2020, the following was true:

- a. Alta Marcellus was a single-member limited liability company with Alta Resources Development LLC (“Alta Resources”) as its single member;
- b. ARD Operating was a single-member limited liability company with Alta Resources as its single member;
- c. One member of Alta Resources was a single-member limited liability company;
- d. The single member of the limited liability company referenced in Paragraph 9(c), *supra*, was a limited partnership; and
- e. The limited partnership referenced in Paragraph 9(d), *supra*, had a limited partner that was a nonprofit corporation formed under the laws of Maine with a principal place of business in Maine.

10. The Alta Defendants prepared a February 9, 2021 Declaration confirming their Maine citizenship, which has been marked CONFIDENTIAL pursuant to the Stipulated and Agreed Protective Order (ECF No. 62) and which has been provided today to counsel for Plaintiffs and Defendants International Development Corporation and SWN Production Company, LLC.

WHEREFORE, Defendants Alta Marcellus Development, LLC and ARD Operating, LLC provide the Court with notice of their Maine citizenship in further support of the Motion to Dismiss this Action Due to Lack of Subject Matter Jurisdiction and for Stay Pending Determination Whether the Action Must be Dismissed in its Entirety (ECF No. 70).

Respectfully submitted:

/s/ John B. Dempsey
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Dated: February 10, 2021

CERTIFICATE OF SERVICE

I, John B. Dempsey, hereby certify that a true and correct copy of the foregoing notice of Maine citizenship was served upon the following counsel of record via electronic mail on this 10th day of February 2021:

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/s/ John B. Dempsey
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